



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.10.2021

Delivered on : 18.11.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

C.M.A(MD) No.19 of 2014

WEB COPY

Mariappan

... Appellant / Petitioner

Vs.

1.K.Jeyalakshmi

2.The Branch Manager,

Oriental Insurance Co. Ltd.,

P.K.S.A.Arumugam Road,

Sivakasi.

... Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the fair and decreetal order dated 07.11.2012 made in M.C.O.P.No.28 of 2006 on the file of Motor Accident Claims Tribunal (Sub Court), Sivakasi.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : No Appearance for R1

Mr.C.Jawahar Ravindran for R2

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.28 of 2006, on the file of the Motor Accident Claims Tribunal (Sub Court), Sivakasi.

2. The appellant herein is the claimant and the respondents herein are the respondents in the claim petition.

3. Brief substance of the petition, in M.C.O.P.No.28 of 2006, is as follows:-

On 24.10.2005 at about 22 hours, when the petitioner parked his two wheeler, bearing Registration No.TN-67-D-8156B56 and was standing nearby, an Auto, belonging to the first respondent, bearing Registration No.TN-67-P-4762, was driven by its driver in a rash and negligent manner dashed against the petitioner. The petitioner sustained injuries. He was admitted in the hospital and he took treatment as inpatient from 24.10.2005 till 31.10.2005 and again from 01.11.2015 till 17.12.2005 and subsequently, he took treatment as outpatient till the date of petition. The petitioner claimed a sum of Rs.3,00,000/- (Rupees Three Lakhs) as compensation.



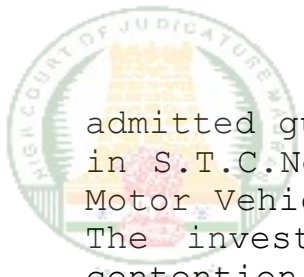
4. Brief substance of the counter filed by the second respondent, in M.C.O.P.No.28 of 2006, is as follows:-

The vehicle was not involved in the accident. A false complaint was registered against the driver of the Auto. The driver of the Auto and the first respondent colluded with the claimant and driver of the Auto admitted guilty and paid fine on 08.11.2005. The petitioner was a pillion rider and the two wheeler was driven by one Veerasingham in a rash and negligent manner and the two wheeler dashed against the Auto. The rider of the two wheeler did not have a valid license at the time of the accident. Since the offending Auto was also not properly insured, the present Auto was falsely implicated in the case. The appellant has not sustained any permanent disability. The age, profession and income of the petitioner are all denied. The nature of the injuries and the manner of the treatment are all denied.

5. The first respondent was set as ex-parte. Four witnesses were examined and fourteen documents were marked on the side of the petitioner. Four witnesses were examined and three documents were marked on the side of the respondents. The Tribunal dismissed the claim petition. Against which, the appellant has preferred this appeal.

6. On the side of the appellant, it is stated that without appreciating the materials available on record and without appreciating the evidence in the proper perspective, the Tribunal dismissed the petition. The tribunal failed to appreciate the dictum of this Court in C.M.A.No.954 of 2010, dated 14.02.2012 in the proper perspective. A mistake crept in the FIR regarding the identification of the vehicle and the same is not fatal. The Tribunal is competent to decide negligence and liability independently. The injured claimant could not furnish the particulars immediately after the accident and that a discrepancy cannot be a ground for dismissing the claim petition. An accident can cause injuries to a human being without damaging the vehicle. The vehicle owned by the first respondent and insured with the second respondent only had caused the accident.

7. On the side of the appellant, it is further stated that appellant was riding as a pillion rider. The two wheeler was drove by one Veerasingham. The vehicle was parked at the time of the accident and the claimant was standing nearby. An Auto that came from the opposite direction in a rash and negligent manner dashed against the petitioner. The petitioner sustained fracture on the left thigh and leg. The petitioner was 32 years old at the time of the accident. The rider of the two wheeler viz., Veerasingham was examined as P.W.3. The driver of the Auto



admitted guilty and paid fine. The judgment of the Criminal Court in S.T.C.No.6096 of 2005 was marked as Ex.P11. The report of the Motor Vehicles Inspector, regarding the Auto, was marked as Ex.P8. The investigation report is not admissible in evidence. The contention of the report cannot be treated as a conclusive proof. Someone gave a wrong number in the FIR and not the claimant. R.W.2-Gopalakrishnan, Police has given evidence regarding the details of the charge sheet, but the tribunal ignored the charge sheet. The claimant filed an appeal in C.M.A.No.954 of 2010 and this Court has remanded the matter back to the Tribunal on 14.02.2012. After the remand, the RTO was examined as P.W.4. Again the Tribunal dismissed the petition for the second time. The Criminal Court judgment also was not considered by the Tribunal and prayed the order of the Tribunal to be set aside.

8. On the side of the respondent, it is stated that the Auto was not involved in the accident and that some other Auto was substituted by the claimant. The original Auto which involved in the accident was not having insurance policy. FIR was registered immediately after the accident. The vehicle number is noted as TN-67-X-4160, but charge sheet was filed mentioning another Auto bearing No.TN-67-P-4762. The second Auto driver pleaded guilty. There was no proper investigation as to why the first Auto was replaced by the second Auto. It is the case of the claimant that the Auto dashed against the claimant and the two wheeler, but there was no damage to the Auto. Inspection report was marked as Ex.R1 without any objection. The two wheeler was not sent for inspection by the Motor Vehicles Inspector. There is a delay of one day in lodging the FIR. Even after remand in C.M.A.No.954 of 2010, the petitioner has not chosen to examine any eyewitness. RTO was examined by the petitioner. Even in the claim petition, the petitioner has not chosen to state that he gave some other number by mistake.

9. In the above circumstances, there is nothing sufficient enough to interfere in the orders of the Tribunal. Hence, this Civil Miscellaneous Appeal is dismissed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsm



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Motor Accidents Claims Tribunal,
Sub Court, Sivakasi.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S. SRINIVASA RAGHAVAN, Advocate (SR-35049[F] dated 18/11/2021)

C.M.A(MD)No.19 of 2014
18.11.2021

SK(CO)
SB(09.12.2021) 4P 5C